

By

*Messy*  
*Clayton*

H.B. No. 1720

A BILL TO BE ENTITLED

AN ACT

amending Subchapter E, Chapter 5, Water Code, providing for the  
cancellation in whole or in part of certificates of adjudication  
by the Texas Water Rights Commission in the same manner as permits  
and certified filing; providing for the definition of "certificate  
of adjudication"; providing for the general principle of  
cancellation of certificates of adjudication, the initiation of  
proceedings, notice, and hearing thereof; providing for certain  
findings to be made by the commission and action to be taken;  
allowing a holder of a permit, certified filing, or certificate  
of adjudication to retain a reservoir for domestic, livestock,  
and recreational purposes to the extent that he has conservation  
storage; exempting those certified filings held by cities to the  
extent that such filing allows diversion for municipal purposes;  
declaring that the failure to initiate proceedings to cancel shall  
not validate or enhance a certified filing, permit, or certificate  
of adjudication and requiring a five-year lapse between  
cancellation proceedings against a particular water right;  
repealing all conflicting laws and providing a savings clause;  
and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Subchapter E., Chapter 5, Water Code, is hereby  
amended to read as follows:

"SUBCHAPTER E. CANCELLATION OF PERMITS,

1 CERTIFIED FILINGS, AND CERTIFICATES  
2 OF ADJUDICATION FOR NONUSE

3 "Section 5.171. DEFINITIONS. As used in this subchapter:

4 "(1) 'other interested person' means any person,  
5 other than a record holder, who is interested in the permit or  
6 certified filing, or any person whose direct interest would be  
7 served by the cancellation of the permit or certified filing in  
8 whole or in part; ~~and~~

9 "(2) 'certified filing' means a declaration of  
10 appropriation or affidavit that was filed with the State Board  
11 of Water Engineers under the provisions of Section 14, Chapter  
12 171, General Laws, Acts of the 33rd Legislature, 1913; ~~and~~

13 "(3) 'certificate of adjudication' means a certificate  
14 issued by the Texas Water Rights Commission under Section 5.323  
15 of this code.

16 "Sec. 5.172. GENERAL PRINCIPLE. A permit, ~~or~~ certified  
17 filing, or certificate of adjudication is subject to cancellation  
18 in whole or in part for 10 years' nonuse as provided by this  
19 subchapter.

20 "Sec. 5.173. CANCELLATION IN WHOLE. If no part of the  
21 water authorized to be appropriated under a permit, ~~or~~ certified  
22 filing, or certificate of adjudication has been put to beneficial  
23 use at any time during the 10-year period immediately preceding  
24 the cancellation proceedings authorized by this subchapter, then  
25 the appropriation is presumed to have been wilfully abandoned,  
26 and the permit, ~~or~~ certified filing, or certificate of  
27 adjudication is subject to cancellation in whole as provided by

1 this subchapter.

2 "Sec. 5.174. COMMISSION TO INITIATE PROCEEDINGS. When the  
3 commission finds that its records do not show that any water has  
4 been beneficially used under a permit, ~~[or] certified filing, or~~  
5 certificate of adjudication during the past 10 years, it shall  
6 initiate proceedings, terminated by public hearing, to cancel the  
7 permit, ~~[or] certified filing, or certificate of adjudication.~~

8 "Sec. 5.175. NOTICE. (a) At least 30 days before the  
9 date of the hearing, the commission shall send notice of the  
10 hearing to the holder of the permit, ~~[or] certified filing, or~~  
11 certificate of adjudication. Being considered for cancellation  
12 notice shall be sent by certified mail, return receipt requested,  
13 to the last address shown by the records of the commission. The  
14 commission shall also send notice by regular mail to all other  
15 holders of permits, certified filings, certificates of  
16 adjudication, and claims of water rights pursuant to Section 5.303  
17 of this code in the same watershed. [as shown by the records of  
18 the commission. Notice shall be sent by certified mail, return  
19 receipt requested, to the last address shown by the records of  
20 the commission. The commission shall also send notice by regular  
21 mail to all other holders of permits and certified filings in the  
22 same watershed.]

23 "(b) The commission shall also have the notice of the  
24 hearing published once a week for two consecutive weeks, at least  
25 30 days before the date of the hearing, in a newspaper published  
26 in each county in which diversion of water from the source of  
27 supply was authorized or proposed to be made, and in each county

1 in which the water was authorized or proposed to be used, as shown  
2 by the records of the commission. If in any such county no  
3 newspaper is published, then the notice may be published in a  
4 newspaper having general circulation in the county.

5 "Sec. 5.176. HEARING. The commission shall hold a hearing  
6 and shall give the holder of the permit, ~~or~~ certified filing,  
7 or certificate of adjudication and other interested persons an  
8 opportunity to be heard and to present evidence that water has,  
9 or has not, been beneficially used for the purposes authorized  
10 by the permit, ~~or~~ certified filing, or certificate of  
11 adjudication during the 10-year period.

12 "Sec. 5.177. COMMISSION FINDING; ACTION. At the conclusion  
13 of the hearing, if the commission finds that no water has been  
14 beneficially used for authorized purposes during the 10-year  
15 period, the appropriation is deemed to have been wilfully  
16 abandoned, of no further force and effect, and the commission  
17 shall cancel the permit, ~~or~~ certified filing, or certificate  
18 of adjudication.

19 "Sec. 5.178. CANCELLATION IN PART. If some part of the  
20 water authorized to be appropriated under a permit, ~~or~~ certified  
21 filing, or certificate of adjudication has not been put to  
22 beneficial use at any time during the 10-year period immediately  
23 preceding the cancellation proceedings authorized by this  
24 subchapter, then the permit, ~~or~~ certified filing, or certificate  
25 of adjudication is subject to partial cancellation, as provided  
26 by this subchapter, to the extent of the 10 years' nonuse.

27 "Sec. 5.179. COMMISSION MAY INITIATE PROCEEDINGS. When

1 the commission finds that its records do not show proof that some  
2 portion of the water has been used during the past 10 years, it  
3 may initiate proceedings, terminated by public hearing, to cancel  
4 the permit, ~~[or]~~ certified filing, or certificate of adjudication  
5 in part.

6 "Sec. 5.180. NOTICE. The commission shall give notice of  
7 the hearing as provided by Section 5.175 of this code.

8 "Sec. 5.181. HEARING. The Commission shall hold a hearing  
9 and shall give the holder of the permit, ~~[or]~~ certified filing,  
10 or certificate of adjudication and other interested persons an  
11 opportunity to be heard and to present evidence on any matter  
12 pertinent to the questions at issue.

13 "Sec. 5.182. COMMISSION FINDING; ACTION. (a) At the  
14 conclusion of the hearing, the commission shall cancel the permit,  
15 ~~[or]~~ certified filing, or certificate of adjudication to the  
16 extent that it finds that:

17 "(1) any portion of the water appropriated under the  
18 permit, ~~[or]~~ certified filing, or certificate of adjudication has  
19 not been put to an authorized beneficial use during the 10-year  
20 period;

21 "(2) the holder has not used reasonable diligence  
22 in applying the unused portion of the water to an authorized  
23 beneficial use; and

24 "(3) the holder has not been justified in the nonuse  
25 or does not then have a bona fide intention of putting the unused  
26 water to an authorized beneficial use within a reasonable time  
27 after the hearing.

1           "(b) In determining what constitutes a reasonable time as  
2 used in Subsection (a)(3) of this section, the commission shall  
3 give consideration to:

4           "(1) the expenditures made or obligations incurred  
5 by the holder in connection with the permit, ~~[or]~~ certified filing,  
6 or certificate of adjudication;

7           "(2) the purpose to which the water is to be applied;

8           "(3) the priority of the purpose; and

9           "(4) the amount of time usually necessary to put  
10 water to a beneficial use for the same purpose when diligently  
11 developed.

12           "Sec. 5.183. RESERVOIR. If the holder of a permit, ~~[or]~~  
13 certified filing, or certificate of adjudication has facilities  
14 for the storage of water in a reservoir, the commission may ~~[shall]~~  
15 allow him to retain the impoundment ~~[water appropriation]~~ to the  
16 extent of the conservation storage capacity of the reservoir, for  
17 domestic, livestock or recreation purposes.

18           "Sec. 5.184. MUNICIPAL CERTIFIED FILING ~~[PERMIT]~~.

19 Regardless of other provisions of this subchapter, no portion of  
20 a certified filing held by a city, town, village, or municipal  
21 water district, authorizing the use of water for municipal  
22 purposes, shall be cancelled if water has been put to use under  
23 the certified filing for municipal purposes at any time during  
24 the 10-year period immediately preceding the institution of  
25 cancellation proceedings.

26           "Sec. 5.185. EFFECT OF COMMISSION INACTION. Failure of  
27 the commission to initiate cancellation proceedings under this

1 subchapter does not validate or improve the status of any permit,  
2 [~~or~~] certified filing, or certificate of adjudication in whole  
3 or in part.

4 "Sec. 5.186. SUBSEQUENT PROCEEDINGS ON SAME WATER RIGHT  
5 [~~PERMIT~~]. Once cancellation proceedings have been initiated  
6 against a particular permit, [~~or~~] certified filing, or certificate  
7 of adjudication and a hearing has been held, the commission shall  
8 not initiate further cancellation proceedings against the same  
9 permit, [~~or~~] certified filing, or certificate of adjudication  
10 within the five-year period immediately following the date of the  
11 hearing."

12 Sec. 2. All laws or parts of laws in conflict herewith are  
13 hereby repealed to the extent of such conflict, however, this Act  
14 is meant to be cumulative of existing law and is meant to be  
15 reconciled with existing law where possible; and should any section  
16 or provisions hereof be declared unconstitutional or invalid,  
17 such invalidity shall not impair any remaining sections or  
18 provisions of this Act would have been passed as to the remaining  
19 portions hereof regardless of the invalidity of any part.

20 Sec. 3. The fact that the present law does not provide for  
21 total and partial cancellation of certificates of adjudication,  
22 while permits and certified filings are subject to such  
23 proceedings, even though all or a part of the water is not being  
24 appropriated and beneficially used thereunder, the fact that a  
25 public need exists to make such water available for appropriation  
26 and beneficial use, and the further fact that the present law  
27 needs to be clarified so as to remove inconsistencies, create an

1 emergency and an imperative public necessity that the  
2 constitutional rule requiring bills to be read on three several  
3 days in each house be suspended, and this rule is hereby suspended,  
4 and that this Act take effect and be in force from and after its  
5 passage, and it is so enacted.



## FORM A

## COMMITTEE REPORT

Date May 16, 1973

HONORABLE PRICE DANIEL, JR.

Speaker of the House of Representatives.

Sir:

We, your Committee on NATURAL Resource, to whom was  
 referred H.B. No. 1720, have had the same under consideration

and beg to report back with recommendation that it (do) pass.

The Committee recommends that this measure be considered for the ~~Consent Calendar~~ (Yes).

House sponsor of Senate measure: \_\_\_\_\_

The measure was reported from Committee by the following record vote:

<u>10</u>	ayes
<u>0</u>	nays
<u>5</u>	present, not voting
<u>8</u>	absent

Gib Lewis  
 Chairman.

This measure proposes new law.

BILL ANALYSIS

Background Information:

In 1967, the Texas Legislature enacted the Water Rights Adjudication Act which authorized the Water Rights Commission to adjudicate streams in Texas and to adjust the rights to waters in those streams. Currently, the law speaks in terms of certified filings and permits when providing for cancellation of water rights.

What This Bill Proposes To Do:

H.B. 1720 would include "certificates of adjudication" among those water rights that may be cancelled in accordance with the existing cancellation statutes.

Section by Section Analysis:

Section 1. Defines "certificate of adjudication" and includes certificates of adjudication among those water rights that may be cancelled under the existing cancellation statutes.

Section 2. Provides for the repeal of conflicting laws and reconciliation with other laws when possible.

Section 3. Declares an emergency.

Summary of Committee Action:

Notice having been posted May 10, 1973, the Committee on Natural Resources considered H.B. No. 1720. It was moved and seconded that H.B. No. 1720 be sent back to the House with the recommendation that it do pass *and be placed on the Consent Calendar.*

The Motion was adopted by the following vote: 10 Ayes, 0 Nays, 5 Present Not Voting, 8 Absent. This measure proposes new law.

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

May 15, 1973

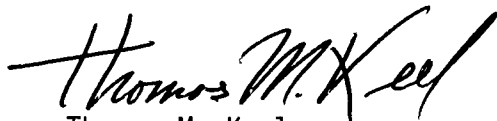
Honorable Gibson (Gib) Lewis, Chairman  
Committee on Natural Resources  
House of Representatives  
Austin, Texas 78701

In Re: House Bill No. 1720  
By: Massey

Sir:

In response to your request and pursuant to House Rule VIII, Section 27, this office finds the fiscal implications of House Bill No. 1720 (providing for the cancellation in whole or in part of certificates of adjudication by the Texas Water Rights Commission in the same manner as permits and certified filing, etc.) to be as follows:

No appreciable cost to the State is anticipated in the event House Bill No. 1720 should pass and become law.



Thomas M. Keel  
Legislative Budget Director

H.B. No. 1720

By Murray

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AN ACT

amending Subchapter E, Chapter 5, Water Code, providing for the cancellation in whole or in part of certificates of adjudication by the Texas Water Rights Commission in the same manner as permits and certified filing; providing for the definition of "certificate of adjudication"; providing for the general principle of cancellation of certificates of adjudication, the initiation of proceedings, notice, and hearing thereof; providing for certain findings to be made by the commission and action to be taken; allowing a holder of a permit, certified filing, or certificate of adjudication to retain a reservoir for domestic, livestock, and recreational purposes to the extent that he has conservation storage; exempting those certified filings held by cities to the extent that such filing allows diversion for municipal purposes; declaring that the failure to initiate proceedings to cancel shall not validate or enhance a certified filing, permit, or certificate of adjudication and requiring a five-year lapse between cancellation proceedings against a particular water right; repealing all conflicting laws and providing a savings clause; and declaring an emergency.

MAY 8 1973

PERMISSION GRANTED TO INTRODUCE

FILED MAY 8 1973

MAY 8 1973

READ 1ST TIME  
AND REFERRED TO COMMITTEE ON

Natural Resources

Dorothy Hallman  
Chief Clerk, House of Representatives

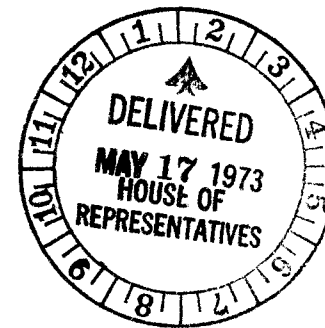
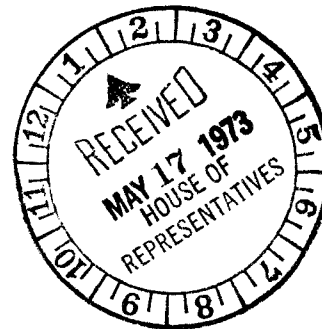
MAY 15 1973 sent to  
Date

Legislative Budget Board for

Fiscal note Lib. Davis

Chairman

MAY 16 1973 REPORTED FAVORABLY SENT TO PRINTER



PRINTED, DISTRIBUTED AND

REFERRED TO COMMITTEE ON

CALENDARS 1:45 P.M. MAY 17 1973  
(Time) (Date)

MAY 21 1973 READ SECOND

TIME \_\_\_\_\_ AND

ORDERED \_\_\_\_\_ ENGROSSED

*now-record rate -*

Dorothy Hallman

Chief Clerk, House of Representatives

MAY 21 1973

Read third time

and Passed

by following vote yeas \_\_\_\_\_

Na

Dorothy Hallman  
Chief Clerk  
HOUSE OF REPRESENTATIVES